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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,241	07/18/2003	Jurgen Horn	100723-14 / Beil Wolff 29	2884

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NEW YORK, NY 10022

EXAMINER

SRIVASTAVA, KAILASH C

ART UNIT PAPER NUMBER

1655

DATE MAILED: 03/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/623,241	JURGEN HORN	
	<b>Examiner</b>	<b>Art Unit</b>	
	Dr. Kailash C. Srivastava	1655	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 October 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

1. Applicants' status inquiries for the instant application filed 11 October 2005 is acknowledged and entered. In response to said "Non-Provisional U.S. Patent Application's Status Inquiries" an Office Action follows.

### Claims Status

2. Claims 1-11 are pending.

### Priority

3. Applicants' claim for foreign priority under 35 U.S.C. §119 (a-d) is acknowledged.

### Objection To Specification

4. The specification is objected to because the first page of specification, in its present form does not properly cite the application priority data. It is requested that the first line of the first page of the specification indicate that the instant application claims priority, as follows.

"This application claims priority to Germany 10233346. 7 filed 23 July 2002."

### ***Claim Rejections - 35 U.S.C. § 103***

5. The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

***A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.***

6. Claims 1-11 are rejected under 35 U.S.C. § 103 (a) as obvious over combined teachings from Kaiser (U.S. Patent 5,968,807) in view of Atlas et al. (Handbook of Microbiological Media, CRC Press, Boca Raton, 1997, Pages 209-210 and 1272 for e.g.) and Horn (U.S. Patent 6,908,745).

Claims recite a culture medium comprising casein soy peptone agar with some of the other ingredients e.g., thioglycollate and bromocresol purple to prepare a culture medium that is sterilized with gamma rays to detect microorganisms in presence of hydrogen peroxide.

Kaiser teaches a culture medium comprising pancreatic digest of casein, soytone, i.e., soybean peptone and a pH indicator as well as phosphate buffer. Horn teaches a gamma sterilizable culture medium for selective enumeration microorganisms, i.e., yeasts and fungi. Atlas et al. teach a variety of culture media for isolating a whole sleuth of microorganisms, especially bacteria grown in presence of a number of chemicals. One of the culture media from Atlas et al. for e.g., comprises bromocresol purple, pancreatic digest of casein or other supplements (e.g., see Pages 209-210 or 1270-1272).

Thus, it would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to modify teachings from Kaiser with those from Horn and Atlas et al. to obtain a culture medium comprising casein, soy peptone agar supplemented with a pH indicator, e.g., bromocresol purple and another component, e.g., sodium thioglycolate because Kaiser teaches a basic recipe for cultivating microorganisms from an environmental sample, wherein said recipe comprises casein soy bean peptone (i.e., soy tone) agar, Horn teaches a culture medium for enumerating yeast and fungi in air samples wherein said medium is sterilized with gamma radiation and Atlas et al. teach a number of recipes for microbiological culture media to cultivate microorganisms in a variety of environmental /cultivation atmospheres. The prior art references do not teach exactly same quantities of all the ingredients as instantly claimed. However, the adjustment of particular conventional working conditions (e.g., the quantities of each one of components in a culture medium or adding the equivalent result producing components, e.g., a pH indicator) is deemed merely a matter of judicious selection and routine optimization of a result-effective parameter which is well within the purview of the skilled artisan.

One having ordinary skill in the art at the time of the claimed invention would have been motivated to modify/combine the teachings from Kaiser according to teachings from Horn and Atlas et al. as discussed above to obtain a culture medium that is sterilized with gamma rays and is applicable to cultivate microorganisms in presence of hydrogen peroxide vapor.

From the teachings of the references cited *supra*, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

7. The prior art made of record and not relied upon is considered pertinent to Applicants' disclosure.

U.S. Patent 6,136, 554, issued to Bochner in 2000.

### ***Claim Rejections - 35 U.S.C. § 112***

8. The following is a quotation of the second paragraph of 35 U.S.C. § 112:

***The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.***

9. Claims 1-11 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.
- The recitation "gamma-sterilizable" in Claims 1-11 renders those claims vague, unclear and indefinite, because said term indicates a futuristic event. The metes and bounds for said term are not defined in the claim language. Applicant should clearly define all the parameters for the term, "gamma-sterilizable".
  - Term "including" renders Claim 1 vague and indefinite because it is not clear whether said term is open, like the conventional term "comprising" or whether the term excludes other ingredients, like the term "consisting of". Examiner suggests that the applicants use the transitional phrase—"comprises".
  - The recitation "hydrogen peroxide bearing situation" renders claims 1 and 10-11 vague, unclear and indefinite, because the metes and bounds for said term are not defined in the claim language. Applicant should clearly define all the parameters for the term, "hydrogen peroxide bearing situation".
  - The recitation "microbial content test agar" renders claim 8 vague, unclear and indefinite, because the metes and bounds for said term are not defined in the claim language. Applicant should clearly define all the parameters for the term, "microbial content test agar".


All other claims depend directly from the rejected claims (e.g., Claim 1) and are, therefore, also rejected under 35 U.S.C. §112, second paragraph for the reasons set forth above.


### **Conclusion**

10. For above stated reasons, no Claims are allowed.
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kailash C. Srivastava whose telephone number is (571) 272-0923. The examiner can normally be reached on Monday to Thursday from 7:30 A.M. to 6:00 P.M. (Eastern Standard or Daylight Savings Time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Terry McKelvey, can be reached on (571)-272-0775 Monday through Friday 8:30 A.M. to 5:00 P.M. The fax phone number for the organization where this application or proceeding is assigned is (571)-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (i.e., PAIR) system. Status information for the published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (i.e., EBC) at: (866)-217-9197 (toll-free). Alternatively, status inquiries should be directed to the receptionist whose telephone number is (703) 308-0196.

  
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RALPH GITOMER  
PRIMARY EXAMINER  
GROUP 1200

March 20, 2006